

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

THE BRANSON LABEL, INC.,	)	
a Florida Corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 6:14-CV-3222-BCW
	)	
AEROPOSTALE, INC., et al.,	)	
	)	
Defendants.	)	

**NON-PARTY STEPHEN A. BABBIT'S MOTION TO  
QUASH SUBPOENA OUT OF TIME**

**COMES NOW** Stephen A. Babbit, by and through counsel, Carnahan, Evans, Cantwell & Brown, P.C., and for his Motion to Quash Subpoena Out of Time, states as follows:

1. Non-party Stephen Babbit is the co-owner, operator and custodian of records for Tri-Lakes Title & Escrow, LLC, which provides title and escrow services in and around Taney County, Missouri, which includes the City of Branson, Missouri.
2. The above captioned lawsuit concerns a large commercial development project located in downtown Branson, known as the Branson Landing.
3. The Branson Landing project is located on land owned by the City of Branson and Empire District Electric Company and leased to the project's developer, HCW Development Company, LLC.
4. Since construction of the Branson Landing, no less than six (6) lawsuits have been filed in which title to a portion of land on which the Branson Landing sits has been at issue. Plaintiff's lawsuit is merely the latest in this line of cases.

5. One of the most hotly contested of these cases was filed by the developer, HCW Development Company, LLC, against Chicago Title Insurance Company, which provided title insurance to the Developer's lender: *HCW Development Company, LLC v. Chicago Title Insurance Company, et al*, St. Louis County Circuit Court, Case No. 11SL-CC04364 (the "Developer Lawsuit").

6. Tri-Lakes Title & Escrow, LLC has in its possession records formerly kept by two, now-defunct companies: Tri-Lakes Escrow, Inc. and Tri-lakes Title Company, Inc. (the "Defunct Companies"). One or both of the Defunct Companies provided title services in connection with the Branson Landing, including serving as the title agent for Chicago Title Insurance Company when it issued title insurance to the Developer's lender.

7. During the course of the Developer Lawsuit, Mr. Babbit, in his capacity as custodian of records for Tri-Lakes Title & Escrow Company, LLC, produced thousands of pages of documents concerning the Branson Landing project.

8. Mr. Babbit was also subject to four (4) days of deposition in the Developer Lawsuit, in which counsel for the Developer aggressively questioned him about every aspect of the Branson Landing project.

9. On October 22 and 23, 2014, respectively, Plaintiff issued two subpoenas: one to Tri-Lakes Title & Escrow, Inc. demanding all records relating to the Branson Landing project (the "Document Subpoena"); and one to Stephen Babbit personally, seeking his deposition on December 17, 2014 (the "Deposition Subpoena").

10. The undersigned received a copy of documents subpoena, and subsequently assisted it in responding to the subpoena by producing to Plaintiff the same thousands of pages of documents it produced in the Developer Lawsuit.

11. Unfortunately, the Deposition Subpoena had been inadvertently left off Mr. Babbit's communication to the undersigned, and I did not become aware of this subpoena or Mr. Babbit's scheduled deposition until this week. Again, this mistake was inadvertent, and Mr. Babbit respectfully requests that the Court consider his motion to quash the Deposition Subpoena out of time.

12. First, Plaintiff is already in possession of thousands of pages of documents concerning the Branson Landing project, and the title work performed in connection therewith.

13. Second, Mr. Babbit has already been subject to four (4) days of deposition in which Developer's counsel relentlessly questioned him about every aspect of the title work performed in connection with the Branson Landing project.

14. In addition, Mr. Babbit suffers from severe diabetes, making his ability to coherently sit through additional deposition testimony difficult at best.

15. Based on the above, Mr. Babbit prays for an order quashing the Deposition Subpoena in its entirety, for the reason that any information sought by Plaintiff can be obtained through a review of Mr. Babbit's prior testimony on the subject and the documents already produced herein. Should Plaintiff still believe it requires Mr. Babbit's deposition following its review of his former testimony, Mr. Babbit prays for an order limiting any deposition of him in this matter to no more than four (4) hours.

**WHEREFORE**, Non-Party Stephen A. Babbit respectfully requests this Court grant his Motion to Quash Subpoena Out of Time; or, in the alternative, enter an Order limiting his deposition to not more than four (4) hours in length; and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

CARNAHAN, EVANS, CANTWELL  
& BROWN, P.C.

*/s/ Richard T. Ashe*

By: \_\_\_\_\_  
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## **CERTIFICATE OF SERVICE**

The undersigned certifies that a complete copy of the foregoing document was served upon the attorneys of record for each party to the above action:

- (√)A. by enclosing same in envelopes addressed to said attorneys at their business addresses as disclosed in the pleadings of record herein, with first class postage fully prepaid, and by depositing said envelopes in a U.S. Post Office mailbox in Springfield, Missouri as set forth below;

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- ( )B. by leaving same in the business office of said attorneys with a secretary thereof;
- ( )C. by handing same to said attorneys;
- ( )D. hand delivery; or
- ( )E. via facsimile transmission:

on the 5th day of December, 2014, by the method checked above.

*/s/ Richard T. Ashe*

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Attorney of Record

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